No. 16348

In the United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

IRVING I. BASS, TRUSTEE IN BANKRUPTCY OF THE ESTATE OF LELAND CAMERON, BANKRUPT, APPELLEE

ON APPEAL FROM THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

REPLY BRIEF FOR THE APPELLANT

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The United States believes that it has covered in its opening brief [1] most of the contentions made by the trustee. There are, however, a few matters discussed by the trustee which warrant further comment.

A. Although the trustee states (p. 4) that he "has no quarrel with the Government's analysis of the nature of its lien," nevertheless throughout his brief he attempts the contrary, i.e., to limit the force and effect of the Federal tax lien in a bankruptcy proceeding vis-a-vis a consensual lien and to treat a Federal tax claim secured by a pre-existing lien as having no greater right to interest than an unsecured tax claim.

[1] "Br." references are to the opening brief of the United States.

The United States does not quarrel with the trustee's contention (p. 4), that a lien does not by itself create an independent liability. This applies, of course, equally to a consensual lien. In the case of a consensual lien the underlying obligation to pay the principal amount of the debt asserted to be owing, as well as interest upon such debt, arises by contract. In the case of taxes, the underlying obligation to pay the principal amount of the tax asserted to be owing, as well as interest upon the tax, arises by virtue of the taxing statute, here, the Internal Revenue Code of 1954.[2]

On the other hand, although a lien is a security device for the payment or discharge of a debt or duty, the significance of a lien, whether consensual or statutory, is not as limited as the trustee contends (p. 4). The lien becomes a charge upon the debtor's property, and a creditor's rights to collect amounts owing to him which his lien secures, particularly in bankruptcy, are enlarged by virtue of the property rights which title to the lien entails. See *Glass City Bank* v. *United States,* 326 U.S. 265; *United States* v. *City of Greenville,* 118 F. 2d 963, 965 (C.A. 4th). See also *United States* v. *Bess,* 357 U.S. 51. (Br. 14–16, 18.) As Judge Learned

[2] The obligation to pay interest on unpaid withholding and F.I.C.A. taxes is imposed by Section 6601 of the 1954 Code (26 U.S.C. 1952 ed., Supp. II, Sec. 6601.) Section 6601(f) provides that interest shall be assessed, collected and paid in the same manner as the tax, and Section 6321 of the 1954 Code (26 U.S.C. 1952 ed., Supp. II, Sec. 6321) provides that the tax lien of the United States shall include any interest. Thus, it is clear that such interest is as much an integral part of the tax lien as the accrued principal amount of the tax.

Hand states in *Columbia Aircraft Co.* v. *United States,* 163 F. Supp. 932 (S.D.N.Y.), in distinguishing between the rights of unsecured and secured creditors to post-bankruptcy interest (p. 934):

> A creditor who obtains security for his debt does so because he is not content to accept the risk of the debtor's continued solvency, and his unwillingness to do so necessarily includes any interest upon the principal.

Also, there is no question but that a statutory lien for taxes is as binding and has as much force and effect as a consensual lien. See *United States* v. *New Britain,* 347 U.S. 81, wherein the Supreme Court stated as follows (p. 84):

> A mortgage is a specific lien, yet "[a] statutory lien is as binding as a mortgage, and has the same capacity to hold the land so long as the statute preserves it in force." *Rankin* v. *Scott,* 12 Wheat. 177, 179.

With one exception, which we contend is not relevant here,[3] the Bankruptcy Act does not discriminate against a statutory lien in favor of a consensual lien. In our opening brief (pp. 7, 8) we have shown that the Bankruptcy Act does not contain any provision relating to the payment of post-bankruptcy interest,

[3] A distinction in the Bankruptcy Act between a consensual lien and the federal tax lien exists by virtue of Section 67c(1) (11 U.S.C. 1952 ed., Sec. 107), which postpones the payment of tax liens on personal property not accompanied by possession to the payment of administrative expenses and wage claims, whereas the payment of consensual liens on personal property not reduced to possession is not similarly postponed. As we have shown (Br. 28–33, 38) this distinction is not material here. See also, *infra*, part D of this reply brief.

but that unsecured creditors have been denied such interest upon general principles of English equity which have been followed by the courts of this country. We have also shown (pp. 7, 8–10, 19–21) that equally long-standing English principles of equity which also have been followed by the courts of this country, have treated unsecured and secured creditors differently in bankruptcy and have recognized the right of secured creditors to such interest where the amount of the security is sufficient to satisfy both the principal and interest on the secured claim.

As we have shown, additionally, in other situations, including such matters as the time when the tax lien becomes perfected, priority of payment, property subject to the lien, including after-acquired property, the effect of the lien over property in the hands of debtors of the bankrupt or in the hands of transferees, right to obtain payment or enforcement of the lien and prevention of the federal tax lien's discharge, etc., the federal tax lien has consistently been treated as having at least as much force and effect as consensual liens. See Br. 16–17, 18–19, 31–33, 35–36, 50–52. See also *Am. Iron Co.* v. *Seaboard Air Line,* 233 U.S. 261. Finally, in our opening brief we have shown that, with respect to the question as to whether the United States should be entitled to obtain post-bankruptcy interest on its tax lien, there are no such material distinctions between the tax lien and those consensual liens which indisputably obtain such interest, as should preclude the former from obtaining this interest. Accordingly, we submit that the trustee's contention (pp. 3–4), that "the existence of a statutory lien, while significant in

bankruptcy for some purposes, does not alter the situation insofar as the Government's right to post-bankruptcy interest is concerned", is wrong.

The trustee's attempt to limit the recognition to be given the federal tax lien at the expense of other liens appears to overlook a basic factor, which we have pointed out (Br. 21–22, 23–25), that the bankruptcy court's jurisdiction over unsecured claims is much more extensive than its jurisdiction over claims secured by valid liens, both consensual or statutory. See Sections 2 and 68c of the Bankruptcy Act (11 U.S.C. 1952 ed., Secs. 11 and 109). A lien recognized as valid against the bankrupt's property prior to his adjudication remains effective against the trustee. When property of the bankrupt subject to a pre-existing valid lien passes to the trustee, it passes *cum onere*. *Burton* v. *Smith,* 13 Pet. 462, 483; *United States* v. *Bess,* 357 U.S. 51, 57; *Michigan* v. *United States,* 317 U.S. 338, 340. Thus, the trustee receives as part of the general estate only the equity in the bankrupt's property in excess of the lien. *Security Mortgage Co.* v. *Powers,* 278 U.S. 149, 153; *In re Quaker City Uniform Co.,* 134 F. Supp. 596 (E.D. Pa.), reversed on other grounds, 238 F. 2d 155 (C.A. 3d), certiorari denied, 352 U.S. 1030. Accordingly, since the provisions of the Bankruptcy Act which deal with proof, allowance and priority of claims (e.g., Sections 57, 63 and 64 (11 U.S.C. 1952 ed., Secs. 97, 103 and 104)), relate only to the bankrupt's property to which the trustee takes title, i.e., the general assets unencumbered by liens, these provisions apply

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only to unsecured claims and do not affect lien claims. See *Allen* v. *See,* 196 F. 2d 608, 610 (C.A. 10th); 3 Collier on Bankruptcy (14th ed., 1956), Sections 57.19, 57.20 and 63.06. Thus, for example, although an unsecured creditor, including the United States for an unsecured tax claim, must file and prove his claim under Section 57, a secured creditor is not required to do so. (Br. 21–23.)

The inapplicability of Section 57 to lien claims is no different from the inapplicability of other provisions of the Bankruptcy Act dealing with claims against general assets of the bankrupt estate. For example, whereas the payment out of the general assets to unsecured creditors is governed by Section 64 (11 U.S.C. 1952 ed., Sec. 104), which, among other things, establishes priorities among certain classes of unsecured creditors, this section is not applicable to secured creditors. Payment to secured creditors is not governed by any provision of the Bankruptcy Act; instead, payment to them is based upon their security, and the order of payment to secured creditors is based upon the common law principle of first in time is first in right. See *In re Pennsylvania Central Brewing Co.,* 114 F. 2d 1010 (C.A. 3d). For example, the Supreme Court has held that the payment of a landlord's lien for rent is not governed by Section 64, and that such a lien must be paid before a claim for local taxes not secured by a lien, although at the date of the decision, taxes held the first priority under Section 64. *City of Richmond* v. *Bird,* 249 U.S. 174. See also *Ingram* v. *Coos County, Or.,* 71 F. 2d 889 (C.A. 9th); *In re Brannon,* 62 F. 2d 959 (C.A.

5th), certiorari denied, *sub nom. Ryan* v. *City of Dallas,* 289 U.S. 742. Likewise, it has been held that the mere fact that a claim was contingent at the date of an adjudication so as to render the claim not provable against the general estate under Section 63 (11 U.S.C. 1952 ed., Sec. 103) does not affect the validity of an existing lien for such an obligation. *Security Mortgage Co.* v. *Powers,* 278 U.S. 149, 155–156; *In re Westmoreland,* 298 Fed. 484 (N.D. Ga.), reversed on other grounds, 2 F. 2d 212 (C.A. 5th), certiorari denied, 267 U.S. 595. Again, it frequently has been held that a lien for unaccrued rentals is not affected by the bankruptcy of the lessee, notwithstanding that such rentals do not constitute a provable claim against the general estate; consequently where the property subject to the lien has been converted into cash by the trustee the lien creditors have been held entitled to payment from the proceeds of such property. *Martin* v. *Orgain,* 174 Fed. 772, 778–779 (C.A. 5th), certiorari denied, 216 U.S. 619; *Courtney* v. *Fidelity Trust Co.,* 219 Fed. 57 (C.A. 6th); *Britton* v. *Western Iowa Co.,* 9 F. 2d 488 (C.A. 8th). Similarly, because of the special position of liens under the Bankruptcy Act it also has been held that lienholders are not required to contribute to general expenses of administration but only to those expenses concerned with the property on which they have their liens. *Reconstruction Finance Corp.* v. *Cohen,* 179 F. 2d 773, 776–777 (C.A. 10th); 6 Remington on Bankruptcy (Fifth ed., 1952), Sections 2609 and 2610.

Where a secured creditor elects to rely solely on his security and remains out of the bankruptcy proceed-

ings, and the property subject to the lien either is real property or personal property in his possession, the terms of the security permitting, the secured creditor should be entitled to interest until the date of payment if the property secured by the lien is sufficient for this purpose. See *In re Brokol Manufacturing Co.,* 221 F. 2d 640 (C.A. 3d). A different result should not obtain, as the trustee also apparently recognizes in his brief (p. 6, fn. 4; p. 10, fn. 8), if a creditor who has a valid lien merely lacks possession of the property subject to the lien. Although, in this latter situation, the bankruptcy court could determine the validity and amount of the lien, once these have been established the lien may not be invalidated or its enforcement prevented. (Br. 24–26, 28–33.) *Goggin* v. *California Labor Div.,* 336 U.S. 118; *United States* v. *England,* 226 F. 2d 205 (C.A. 9th); *Reconstruction Finance Corp.* v. *Cohen,* 179 F. 2d 773, 776–777 (C.A. 10th); *United States* v. *Eiland,* 223 F. 2d 118 (C.A. 4th); *In re Brokol Manufacturing Co.,* 221 F. 2d 640 (C.A. 3d).

B. There is not any merit to the trustee's contention (p. 5), that it is fallacious for the United States to urge that disallowance of post-bankruptcy interest constitutes a partial invalidation of its lien. Interest is specifically included in the tax lien by Section 6321 of the 1954 Code (26 U.S.C. 1952 ed., Supp. II, Sec. 6321). By Section 6322 of the 1954 Code (26 U.S.C. 1952 ed., Supp. II, Sec. 6322) the lien (including interest) continues until liability for the amount assessed is satisfied. Accordingly, if at the time the petition in bankruptcy is filed the amount of the tax

subject to the lien is unpaid, and if under Section 6601 of the 1954 Code (26 U.S.C. 1952 ed., Supp. II, Sec. 6601) interest had accrued on the unpaid amount of the tax, then to permit the United States to obtain only such interest which accrued to the date of the filing of the petition in bankruptcy and to disallow the balance of the interest accruing thereafter to the time of payment of the tax, would result in the United States receiving a lesser amount than is called for under the terms of its lien. Clearly this would result in a partial invalidation of its tax lien.

Further, as we have shown, *supra,* the trustee's statement (p. 5), that the real issue concerns the amount validly allowable in bankruptcy on the claim for which the lien is security, actually begs the issue. Even with respect to mortgagees and "other types of bargained for security" which the trustee admits is entitled to post-bankruptcy interest (pp. 6–7), such interest would not be allowable solely on the debt unless the debt were secured. Accordingly, we submit that it is by reason of the security, rather than by reason of the underlying obligation, that the creditor obtains his right to post-bankruptcy interest.[4]

[4] The trustee's statement (p. 6), that the Supreme Court has never decided the extent to which post-bankruptcy interest should be allowed to secured creditors, while correct, is incomplete. In *Vanston Committee* v. *Green*, 329 U.S. 156, the Supreme Court, although denying the recovery by a mortgagee of interest upon interest for the period following the commencement of bankruptcy, recognized (pp. 164–165) the exception involved in the present case, and the payment of simple interest on the mortgage was allowed without contest (p. 159).

Further, the trustee's statement (p. 7), that no Court of Appeals decision has applied the exception involved in this

C. Although the trustee concedes (p. 3) that *New York* v. *Saper,* 336 U.S. 328, and *United States* v. *Edens,* 189 F. 2d 876 (C.A. 4th), affirmed, 342 U.S. 912, dealt with non-liened tax claims, nevertheless the trustee contends that the rationale of these decisions applies with equal force to liened tax claims (p. 21). We submit that in this respect the trustee errs. As we have shown in our original brief and in part A of our reply brief, *supra,* the United States sought to obtain post-bankruptcy interest in *Saper* upon the ground that unsecured tax claims were treated more favorably in bankruptcy than other unsecured claims and the general bankruptcy rule of disallowing post-bankruptcy interest to unsecured creditors should not apply to unsecured tax claims. The Supreme Court's rejection in *Saper* of this contention of the United States was based upon an analysis of the changes made by the Chandler Act amendments to Sections 57 and 64 of the Bankruptcy Act which manifested an intention by Congress to treat unsecured tax claims the same as other unsecured claims, with the result that the general bankruptcy rule of disallowing post-bankruptcy interest to unsecured creditors would apply to unsecured tax claims. The Supreme Court in *Saper* was not presented with and did not discuss the question as to whether the same result would

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case to a tax lien, also is incomplete. There has not been any case in any Court of Appeals in which the United States sought to obtain post-bankruptcy interest on its tax lien until the present case and *United States* v. *Harrington*, which is currently pending in the Fourth Circuit (No. 7812).

apply to secured claims and its decision should not be given such effect, as the trustee attemps to do.

Further proof that neither the decision in *Saper* nor the rationale of that decision is applicable to liened tax claims is shown by the decision in *Goggin* v. *California Labor Div.,* 336 U.S. 118. Although *Goggin* was not concerned with post-bankruptcy interest, that case did involve a question concerning the validity of a liened tax claim of the United States. In holding that such a claim was to be treated as a secured debt under Section 67 of the Bankruptcy Act (11 U.S.C. 1952 ed., Sec. 107), the Supreme Court stated (pp. 126–129) that the Chandler Act did not suggest any abandonment of the general purpose of Congress to continue to safeguard interests under liens perfected before bankruptcy.[5] *Goggin* was decided approximately five weeks before *Saper.* Accordingly, we submit that if *Saper* were intended to refer to liened tax claims this would have been made clear. However, the *Saper* opinion neither discussed liened claims nor cited the *Goggin* decision. See *Oppenheimer* v. *Oldham,* 178 F. 2d 386, 389 (C.A. 5th); *In re Macomb Trailer Coach,* 200 F. 2d 611, 613 (C.A. 6th), certiorari denied, *sub nom. McInnis, Trustee* v. *Weeks,* 345 U.S. 958. (See also Br. 26–27.) Although we do not question the applicability of the

[5] On page 22, fn. 12, of his brief the trustee attempts to make too much of a typographical error in the brief of the United States (p. 43) where the word "interest" rather than "interests" was quoted from the *Goggin* opinion (336 U.S. 118, 126–127). Indeed, at another point in our brief (p. 32) the quotation is correctly given, and it is difficult to see how anyone could be misled.

Saper decision to unsecured claims, we do contend that it is not relevant to the present case.[6]

D. The essence of the trustee's position appears to be, as expressed by him (pp. 8–9), that the Bankruptcy Act distinguishes between consensual and statutory liens. We agree that Congress has in certain specific instances treated statutory liens differently from consensual liens. We submit, however, that the distinctions should be limited to those enacted by Congress. As we have shown (Br. 29–33, 38, 42–44) none of the differences concern post-bankruptcy interest. If Congress had intended to permit additional distinctions to exist surely it would have expressed them in the statute. In the absence of a statutory provision we submit that this Court should not assume such an intention.

The trustee (Br. 8–10, 20) appears to give much greater effect to Section 67c of the Bankruptcy Act (11 U.S.C. 1952 ed., Sec. 107) than is warranted. As we have pointed out (Br. 29–33, 38), Section 67c does not refer to or impair the right of the United States to obtain post-bankruptcy interest on its tax lien.

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[6] It does not appear that 2 Remington on Bankruptcy (1956 ed.), Sections 800–805, quoted by the trustee (p. 10) is applicable here. An analysis of this statement reveals that Remington was commenting upon the status of an unsecured claim. This is shown by the fact that the treatise in another section refers to the necessity of distinguishing between a tax lien and a tax priority (2 Remington on Bankruptcy, *supra*, Sections 905, 908) and to the granting of post-petition interest to a secured creditor (2 Remington on Bankruptcy, *supra*, Section 916). See also 3 Collier on Bankruptcy (14th ed., 1956), Section 64.403, and 4 Collier on Bankruptcy (14th ed., 1942), Section 67.24.

Section 67c distinguishes between tax liens, both Federal and state, and other state and local statutory liens. Under Section 67c(2) the latter may be invalidated under certain circumstances, whereas under Section 67c(1) payment of the former may only be postponed to two classes of creditors. We submit that if Congress had intended to have tax liens treated similarly to state statutory liens, it easily could have made Section 67c(2) applicable to tax liens. But it did not do so. See Section 67b. See also *Goggin* v. *California Labor Div., supra.*

The impact of Section 67c(1), according to the trustee (pp. 9–10, 23–24), is that where the postponement provisions apply a trustee cannot pay a tax lien until after the amount of priority wages and expenses of administration are determined, so that other creditors would be adversely affected by the accrual of interest during a compulsory waiting period. In making such a contention the trustee has misinterpreted the word "postponed" as used in subsection c(1). He has interpreted it to mean postponed in time, a chronological delay. However, an examination of the statute, as well as the Committee Reports on the Act of June 22, 1938, c. 575, 52 Stat. 840 Sec. 1, the so-called Chandler Act, and of the Act of July 7, 1952, c. 579, 66 Stat. 420 Section 21(d), which amended Section 67c of the Bankruptcy Act, show that the word "postponed" was intended to relate to priority of payment and not in a delay in payment. See H. Rep. No. 2320, 82d Cong., 2d Sess., p. 13 (2 U.S.C. Cong. & Adm. News (1952) 1960, 1973). Accordingly, the trustee's contention loses much force.

In any event, Section 67c(1) does not affect tax liens on real property, so no delay need result in paying these liens. Further, as the trustee concedes (p. 10, fn. 8), if the United States has possession of personal property subject to a tax lien, Section 67c(1) is likewise inapplicable, and no delay need result. But even in the case where Section 67c(1) is applicable, there does not appear to be any basis for the trustee's assumption of a compulsory waiting period. There does not appear to be any reason why a trustee could not make an early payment of the principal amount of the tax claim, or at least part of it, if amounts are reserved for payment of anticipated wage claims and administration expenses, and such payment would stop further accrual of interest. In any event, the trustee has not shown that payment to mortgagees where the trustee has possession of the property generally are made more quickly than for a tax lien, the amount and validity of which usually are readily determinable.[7]

E. We submit that *In re Young,* 171 F. Supp. 317 (W.D. Wis.), was wrongly decided, and that the

[7] It does not follow, as urged by the trustee (pp. 22–23), that to allow post-bankruptcy interest on a tax lien would require the payment to all non-governmental statutory lienors whose liens are not invalidated by Section 67c(2). The statutes creating many of these liens contain different provisions from the Internal Revenue Code, and some of these other statutes do not contain any express provision by which the lien includes interest. See 19 West's Annotated California Codes (1955 ed.), Code of Civil Procedure, Section 1185.1, relating to liens of mechanics and others upon real property. The California courts have held that, under the statute, where the amount of the lien cannot be determined until adjudication by a court, interest can be allowed only from the date of the

trustee errs in relying upon it (pp. 14–16). In particular, there is no warrant to the trustee's reliance (p. 14) upon language in *Young* (p. 321), that the United States should not be entitled to post-bankruptcy interest in the absence of an explicit Congressional direction. In the first place, as we have shown, *New York* v. *Saper,* 336 U.S. 328, did not involve lien claims. Second, the rules governing the payment of such interest have never been contained in the bankruptcy statutes either of England or of this country. Cf. *New York* v. *Saper, supra.* Third, there has not been any need for Congress to make any clarifying changes in the statute to permit the United States to obtain post-bankruptcy interest, since there have not been any Supreme Court or Court of Appeals decisions since *Saper* dealing with tax lien claims.

Nor is there any justification upon the trustee's reliance (p. 15) upon an analogy made in *Young* (pp. 322–323) between a tax lien and a judgment lien. Although Section 63a(1) of the Bankruptcy Act (11 U.S.C. 1952 ed., Sec. 103) places limitations upon the payment of interest on judgment claims, no similar limitation was included in Section 63 or any other

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judgment. *Cox* v. *McLaughlin*, 76 Cal. 60, 67–72, 18 Pac. 100, 103–105; *Macomber* v. *Bigelow*, 126 Cal. 9, 14–15, 58 Pac. 312, 314; *Burnett* v. *Glas*, 154 Cal. 249, 259–260, 97 Pac. 423, 427; *Perry* v. *Magneson*, 207 Cal. 617, 622–623, 279 Pac. 650, 652. Cf. *Meda* v. *Lawton*, 217 Cal. 282, 285–286, 18 P. 2d 665, 667. Under the circumstances, it may well be said that the right of these lienholders to interest is dependent upon their obtaining a judgment. Accordingly, it would appear that their right to post-bankruptcy interest would fall within the express exception of Section 63a(1) of the Bankruptcy Act (11 U.S.C. 1952 ed., Sec. 103).

provision relating to the extent of payment of a federal tax lien.

Additionally, although a tax assessment may have some effects of a judgment, there is no direct analogy between the two. A tax lien possesses many attributes which a judgment lien does not have. The force and effect of a judgment lien depend upon state law; and in some jurisdictions a judgment lien covers only real property, whereas a tax lien, regardless of state law, covers both real and personal property. A judgment lien may require possession to become effective, whereas a tax lien becomes effective without possession. Also, regardless of whether a judgment lien is considered general or specific, a tax lien has been held to be as binding upon property as a consensual lien.[8]

[8] The trustee's reliance (p. 16) upon *In re Mighell*, 168 F. Supp. 811 (Kans.), currently on appeal by the United States to the Tenth Circuit (No. 6151), also is misplaced. In *Mighell* the assets of the bankrupt subject to the Federal tax liens were not sufficient to cover both the principal amount of the taxes and interest to the date of payment. Accordingly, in that case the United States was not relying upon the same ground for the recovery of such interest which it does in the present case.

The trustee also errs in relying (p. 20) upon *Sword Line* v. *Industrial Commissioner of State of N.Y.*, 212 F. 2d 865 (C.A. 2d), certiorari denied, 348 U.S. 830, for the proposition that the "discretionary control of a court over interest not based on a contract is traditional." As the trustee recognizes (p. 20, fn. 11), that case involved non-liened claims.

Finally, it does not appear that the decision of *Dayton* v. *Pueblo County*, 241 U.S. 588, cited in *Saper*, *supra*, p. 336, and by the trustee (pp. 21–22), is applicable to the present case. In *Dayton* v. *Pueblo County*, the holders of tax certificates who paid taxes on property of the bankrupt purchased at tax sales, which sales were declared invalid, were entitled to reimbursement for the amounts of the tax paid by them plus interest on such amount at the ordinary legal rate. The

F. The trustee's contention (pp. 22–23), that the policy consideration of protecting the public revenues is not applicable to tax liens, overlooks the fact that in *Saper* such a policy was held to have been modified by Congress only with respect to unsecured tax claims. However, we submit that no conflict exists between the Internal Revenue Code and the Bankruptcy Act with respect to interest payments to be made to secured creditors in bankruptcy. It is clear that the amendments enacted by Congress to the Bankruptcy Act do not impinge upon the extent to which tax liens may obtain interest payments.

G. With respect to the trustee's contention (pp. 23–24), that to permit the United States to obtain post-bankruptcy interest might adversely affect unsecured creditors, as the United States has shown (Br. 46–53), the question as to what are conceived to be the equities appropriate for unsecured creditors is a matter of policy to be resolved by Congress. The history of the bankruptcy acts shows that Congress has not intended all creditors to be treated equally. Secured creditors have always received priority at the expense of the unsecured creditors. Indeed, this is a rule developed in equity in adjustment of the respective claims of secured and unsecured creditors. *Ticonic Bank* v.

Supreme Court held that since under Section 64a of the Bankruptcy Act the bankruptcy court could order the trustee to pay all taxes legally owing by the bankrupt it was proper to reimburse the certificate holders who had paid the taxes, and that the certificate holders could obtain interest upon equitable principles. Accordingly, there is no basis for the trustee's contention (pp. 21–22), that if the Supreme Court in *Saper* had recognized the right of tax liens to post-bankruptcy interest it would have distinguished *Dayton* on this ground.

Sprague, 303 U.S. 406, 411–431; *In re Knox-Powell-Stockton Co.,* 100 F. 2d 979 (C.A. 9th). Where the United States has only an unsecured claim it would be seeking an amount out of the general assets of the bankrupt estate. But where the United States is asserting a liened claim it is not attempting to share in the general assets of the bankrupt estate.

CONCLUSION

The order of the District Court should be reversed, and the secured claims of the United States in the amount of $2,453.64 for interest should be allowed in full.

Respectfully submitted,

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JULY 1959.

U.S. GOVERNMENT PRINTING OFFICE: 1959